

ALJ/SPT/jt2

**PROPOSED DECISION**

Agenda ID #13869 (Rev 1.)

Ratesetting

5/21/15 Item #4

Decision **PROPOSED DECISION OF ALJ TSEN** (Mailed 4/1/2015)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Apple Valley  
Ranchos Water Company for Authority to  
Increase Rates Charged for Water Service by  
\$3,127,463 or 14.88 in 2015, \$2,056,455 or 8.4% in  
2016 and \$2,160,731 or 8.19% in 2017.

Application 14-01-002  
(Filed January 2, 2014)

**INTERIM DECISION REJECTING SETTLEMENT AND ADOPTING INTERIM  
RATES FOR APPLE VALLEY RANCHOS WATER COMPANY**

**INTERIM DECISION REJECTING SETTLEMENT AND ADOPTING INTERIM RATES FOR APPLE VALLEY RANCHOS WATER COMPANY****Summary**

This decision rejects the Proposed Settlement filed by Apple Valley Ranchos Water Company (Ranchos) and the Office of Ratepayer Advocates (ORA) on August 8, 2014 and adopts interim rates subject to refund or surcharge for Apple Valley Ranchos Company. The Commission also re-opens the record to address Governor Brown's Executive Order B-29-15 and allow testimony and briefing on issues previously settled in the Proposed Settlement. A Proposed Decision in the instant proceeding was issued and mailed on April 1, 2015. The Proposed Decision adopted most settled issues between ORA and Ranchos, but modified the Mains Replacement Program. Parties indicated in comments and communications to the Commission that they would not accept the modification.

This decision authorizes interim rates subject to refund or surcharge based on the Proposed Decision issued on April 1, 2015. The interim rates are intended to minimize under-collection and avoid surcharges amortized over a shorter period for Apple Valley ratepayers. The interim rates represent an 11.56 percent increase over rates adopted in the last General Rate Case and the average residential customer will see its monthly bill go up from \$65.37 to \$71.81 each month, which represents a \$6.44 difference and a 9.85 percent increase.

This proceeding remains open pending additional testimony and briefing by the parties.

**1. Procedural History**

On January 2, 2014, Apple Valley Ranchos Water Company (Ranchos) filed a General Rate Case Application 14-01-002 requesting authority to increase its revenue requirement to \$3,127,463 or 14.88 percent for 2015, \$2,056,455 or

8.48 percent in 2016, and \$2,160,731 or 8.19 percent in 2017. Ranchos is a Class A water company subject to the jurisdiction of this Commission and the current requirements of Decision 07-05-065, which adopted a revised Rate Case Plan for Class A water utilities (Rate Case Plan). The Office of Ratepayer Advocates (ORA) filed its protest to the Application on February 10, 2014. On February 19, 2014, the Town of Apple Valley (Town) filed a motion for party status, which was granted on February 20, 2014.

The assigned Administrative Law Judge (ALJ) conducted a prehearing conference on April 1, 2014. On April 17, 2014, Commissioner Carla J. Peterman issued a Scoping Memorandum and Ruling. On April 30, 2014, public participation hearings were held in Apple Valley.

From June 4, 2014 to June 13, 2014, parties engaged in settlement discussions. Evidentiary hearings on the disputed issues were held on June 16 and 17, 2014. Ranchos, ORA and the Town filed opening briefs on July 21, 2014 and reply briefs on August 4, 2014.

On July 21, 2014, Ranchos filed a motion for interim rate relief, and on August 4, 2014, the assigned ALJ issued a ruling granting interim rates increased by the rate of inflation, to be implemented on January 1, 2015.

On August 8, 2014, ORA and Ranchos filed a joint motion requesting approval of the Settlement Agreement. While not a party to the Settlement Agreement, the Town was represented by counsel and attended settlement negotiations.<sup>1</sup> On September 8, 2014, the Town filed comments to the Joint Motion.

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<sup>1</sup> See Joint Motion to Approve Settlement filed by the Office of Ratepayer Advocates and Apple Valley Water Company on August 8, 2014, at 4.

On January 8, 2015, the assigned ALJ issued a ruling requiring Ranchos to submit additional information on its 2014 Mains Replacement Program. Ranchos responded on January 15, 2015.

A Proposed Decision was mailed on April 1, 2015 which resolved disputed issues between the parties, adopted the majority of the Proposed Settlement and modified the Mains Replacement Program in the Proposed Settlement.

Also on April 1, 2015, Governor Brown issued Executive Order B-29-15<sup>2</sup> imposing a 25 percent mandatory water reduction in 2015 over 2013 usages in urban areas, commercial, industrial, and institutional properties. B-29-15 directed the State Water Resources Board (Water Board) to implement the 25 percent reduction. On May 7, 2015, we issued Resolution W-5041<sup>3</sup> directing water utilities under Commission jurisdiction to comply with emergency water use regulations adopted by the Water Board on May 5, 2015.

Based on opening comments from the parties, the assigned ALJ issued a ruling on April 24, 2015 requiring parties to notify the Commission of their acceptance or rejection of the alternative terms proposed by the Commission in the Proposed Decision. In that same ruling, the assigned ALJ also set the proceeding for evidentiary hearings and additional briefing if the parties chose to reject the Commission modification.

On May 1, 2015, the parties notified the Commission that they declined to accept the Commission modification.

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<sup>2</sup> See Governor's Executive Order B-29-15 issued on April 1, 2015.

<sup>3</sup> See Commission Resolution W-5041.

On May 4, 2015, ORA, Ranchos and the Town filed their Joint Case Management Statement informing the Commission that:

1. ORA and Ranchos have agreed to maintain the terms of the Proposed Settlement as to all issues except the Mains Replacement Program;
2. ORA and Ranchos have reached an alternative agreement on the Mains Replacement Program;
3. The Town contested the revised resolution of the Mains Replacement Program; and
4. All parties waived evidentiary hearings and agreed to brief the Mains Replacement Program issue based on the existing record.

On May 5, 2015, the assigned ALJ issued the Presiding Officer's Ruling setting a Reasonableness Hearing on the Amended Settlement Agreement Between Ranchos and ORA.

On May 13, 2015, a reasonableness hearing was held at the Commission. Ranchos and ORA presented witnesses supporting the proposed revised Mains Replacement Program. The Town had opportunity to cross-examine Ranchos and ORA witnesses on the Mains Replacement Program issue.

## **2. Standards of Review**

### **2.1. General Standard of Review**

Ranchos, as the applicant, bears the burden of proof to show that the regulatory relief it requests is just and reasonable and the related ratemaking mechanisms are fair.

### **2.2. Proposed Partial Settlement**

The Commission's Rules of Practice and Procedure (Rules) specifically address the standard of review on proposed settlements. As required by Rule 12.1, not all parties to the proceeding must be parties to

the settlement,<sup>4</sup> and the proposed settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest.<sup>5</sup>

Furthermore, pursuant to Rule 12.4, the Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest. Upon rejection, the Commission may propose alternative terms that are acceptable to the Commission while allowing the parties reasonable time to accept the terms or to request other relief.

### **3. The Proposed Settlement Agreement**

In the Proposed Decision, we found the original settlement on the Mains Replacement Program to be against the public interest. Pursuant to Rule 12.4, the Commission proposed alternative terms to the settlement between ORA and Ranchos. The parties have exercised their right to reject the Commission modification and as such, the Proposed Settlement becomes void, and the parties are in their respective positions prior to their entry into the settlement agreement.

Based on the Parties' comments and communication to the assigned ALJ, the Proposed Settlement is rejected.

While Ranchos and ORA have reached an alternative settlement on the Mains Replacement Program, the Town remains in opposition. We have already

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<sup>4</sup> Rule 12.1(a) states in relevant part: Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant.

<sup>5</sup> Rule 12.1(d) states: The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

set out a briefing schedule for the parties in an April 24, 2015 ruling, and will issue our final decision after the additional briefings.

#### **4. Interim Rates**

On August 4, 2014, the assigned ALJ granted Ranchos' motion for Interim Rate Relief, authorizing Ranchos to implement a rate increase on January 1, 2015, based on the rate of inflation in the event final rates will not be put into effect until after January 1, 2015.<sup>6</sup> The Proposed Decision authorized an 11.56 percent rate increase, which is above the rate of inflation on which the current interim rates increase was based.<sup>7</sup>

In order to reduce under-collection being amortized over a short period of time and avoid rate shock to the ratepayers, we authorize Ranchos to implement interim rates on June 1, 2015 based on the Proposed Decision issued on April 1, 2015.

#### **5. Governor's Executive Order B-29-15**

To implement the Governor's Executive Order B-29-15 and the corresponding emergency water use regulations adopted by the Water Board, we issued Resolution W-5041. Resolution W-5041 directs water utilities under Commission jurisdiction to adopt a customer use reduction program to achieve the mandated reduction. Based on regulations adopted by the Water Board, Ranchos must achieve a 28 percent reduction from June 1, 2015 to February 15, 2016 as compared to its production for the same months in 2013.

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<sup>6</sup> See Assigned ALJ's Ruling Granting Interim Rates on August 4, 2015.

<sup>7</sup> The interim rate that was implemented, effective January 1, 2015, was based on the then current CPI-U, which was 1.7 percent.

While ORA and Ranchos have reached settlement on the issue of water consumption, that number must necessarily change to reflect the state mandated reduction. A separate ruling amending the scope will provide guidance to the parties going forward.

## **6. Disputed Issues Already Litigated by the parties**

For the sake of cohesion, we hold our decision on disputed issues between ORA and Ranchos not contained in the settlement agreement to be resolved in our final decision. The disputed items are:

- Conservation estimate;
- Conservation balancing account;
- Solar project memorandum account;
- Office remodel balancing account;
- Use of estimates in balancing accounts;
- Level payment plan;
- Sales reconciliation mechanism;
- Inclusion of gravity irrigation system in the WRAM/MCBA; and,
- The inclusion of chemicals in the MCBA.

Three unresolved issues between the Town and Ranchos will also be resolved by our final decision. They relate to: 1) WRAM/MCBA Implementation Review; 2) Rate Design; and 3) Water Rate Comparison.

## **7. Comments on Proposed Decision**

The proposed decision of ALJ Tsen in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by ORA and Ranchos on April 21, 2015. Reply comments were filed by



ORA and Ranchos on April 27, 2015. This decision has been modified to reflect comments of the parties.

### **8. Assignment of Proceeding**

Carla J. Peterman is the assigned Commissioner and ALJ S. Pat Tsen is the Presiding Officer in this proceeding.

### **Findings of Fact**

1. Ranchos is a Class A Water Company subject to the Commission's jurisdiction.
2. There is an adequate record composed of all filed and served documents.
3. On August 8, 2014, Ranchos and ORA filed a motion to adopt a settlement agreement on various issues.
4. On September 8, 2014, the Town filed comments to the Joint Motion.
5. On April 1, 2015, the Commission issued a Proposed Decision which modified the Mains Replacement Program issue in the settlement agreement.
6. On May 1, 2015 the parties declined to accept the modifications proposed by the Commission.
7. On May 4, 2015 ORA and Ranchos reached an alternative settlement agreement.
8. The Town objects to ORA and Ranchos' alternative settlement on the Mains Replacement issue.
9. The Parties have waived further evidentiary hearings and agreed to brief the Mains Replacement Program Issue based on the existing record.
10. The Proposed Decision issued on April 1, 2015 authorized an 11.56 percent rate increase for 2015, which is significantly above the currently adopted interim rates.

11. Without adopting interim rates, Ranchos customers may experience high surcharges amortized over a short period, once a final decision in this General Rate Case has been adopted.

12. Pursuant to Executive Order B-29-15 and the Commission's Resolution W-5041, Ranchos must implement a customer water use reduction program to achieve a 28 percent reduction in its production from June 1, 2015 to February 15, 2015 as compared to the same months in 2013.

### **Conclusions of Law**

1. Pursuant to Rule 12.4 the Commission rejected the Proposed Settlement and proposed alternative terms that are acceptable to the Commission.

2. Pursuant to Rule 12.4, Ranchos and ORA has refused the Commission's proposed modification, and requested other relief through an alternative settlement agreement.

3. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless proponents to the settlement are able to show that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

4. Ranchos, ORA and the Town should be allowed to further brief the Commission on the Alternative Settlement.

5. Ranchos should be authorized to implement interim rates based on the proposed decision issued by the Commission.

6. Ranchos should revise its water consumption forecast pursuant to Executive Order B-29-15 and Resolution W-5041.

**O R D E R**

**IT IS ORDERED** that:

1. The joint motion of Apple Valley Ranchos Water Company and the Office of Rate Payer Advocates to approve the Settlement Agreement is denied.
2. Apple Valley Ranchos Water Company, the Office of Rate Payer Advocates, and the Town of Apple Valley shall adhere to the briefing schedule set out in the Administrative Law Judge's Ruling issued on April 24, 2015 unless further amended by Commissioner or Administrative Law Judge ruling
3. Apple Valley Ranchos Water Company shall implement interim rate increases subject to refund and surcharges on June 1, 2015, based on the April 1, 2015 Proposed Decision.
4. Apple Valley Ranchos Water Company shall revise its water consumption forecast to implement the governor's Executive Order B-29-15 pursuant to a revised scoping memo to be issued separate from this Decision.
5. Application 14-01-002 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.